

David H. Waters, CASB 078512
dwaters@burnhambrown.com
 Jack W. Schwartz, Jr., CASB 124506
jschwartz@burnhambrown.com
 BURNHAM BROWN
 A Professional Law Corporation
 P.O. Box 119
 Oakland, California 94604

 1901 Harrison Street, 14th Floor
 Oakland, California 94612
 Telephone: (510) 444-6800
 Facsimile: (510) 835-6666

Attorneys for Federal Deposit Insurance Corporation as Receiver
 for Defendant IndyMac Federal Bank, FSB

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

EDEN GARDEN LLC, a California limited
 liability company; ALI K. AMIDY, an
 individual; GUITI NAHAVANDI AMIDY, an
 individual; CENTRA NET INVESTMENT
 LLC, a California limited liability company,

Plaintiffs,

v.

INDYMAC VENTURE, LLC, a Limited
 Liability Company; FEDERAL DEPOSIT
 INSURANCE CORPORATION, as
 Conservator of IndyMac Federal Bank, FSB,
 and DOES 1-10,

Defendants.

No. CV-11-02356-JF

*This matter assigned to Honorable Jeremy
 Fogel, Courtroom No. 3, for All Purposes*

**STATEMENT RE FAILURE OF
 PLAINTIFFS TO SERVE OPPOSITION
 TO FEDERAL DEPOSIT INSURANCE
 CORPORATION AS RECEIVER OF
 DEFENDANT INDYMAC FEDERAL
 BANK, FSB's MOTION TO DISMISS
 CLAIMS**

[F.R.C.P. Rules 12(b)(6) and 12(b)(1)]

Date: August 5, 2011
 Time: 9:00 a.m.
 Dept: Courtroom No. 3
 Judge: Honorable Jeremy Fogel

As of July 5, 2011, moving party, the Federal Deposit Insurance Corporation as Receiver
 of Defendant IndyMac Federal Bank, FSB ("*FDIC – Receiver*") has not been served with any
 papers in opposition to its Motion To Dismiss Claims ("*Motion*").

The Motion was served, by mail, on Plaintiffs' counsel on June 10, 2011¹. Pursuant to

¹ See, Certificate of Service – Pacer Document 14-5 in this matter.

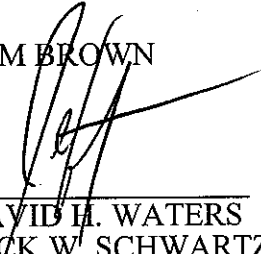
1 United States District Court, Northern District of California Local Civil Rules 5-5 and 7-3, any
2 opposition papers were due to be filed with this Court and served on the parties on or before
3 June 27, 2011.

4 The FDIC-Receiver therefore requests that this Court grant the Motion and that
5 Plaintiffs' Complaint against the Federal Deposit Insurance Corporation As Receiver of
6 Defendant IndyMac Federal Bank, FSB (erroneously sued herein as Federal Deposit Insurance
7 Corporation as Conservator of IndyMac Federal Bank) be dismissed.

8 Dated: July 5, 2011

BURNHAM BROWN

9
10 By:


11 DAVID H. WATERS
12 JACK W. SCHWARTZ, JR.
13 Attorneys for Federal Deposit
14 Insurance Corporation as Receiver
15 for Defendant IndyMac Federal
16 Bank, FSB

17
18
19
20
21
22
23
24
25
26
27
28
1086219

1 *Eden Garden LLC v. IndyMac Venture, LLC, et al.*
2 United States District Court – Northern District of California, San Jose Division
3 Action No: CV-11-02356-JF

4 **CERTIFICATE OF SERVICE**

5 I, Douglas Watson, certify and declare as follows:

6 I am over the age of 18 years and not a party to this action.

7 My business address is Burnham Brown, 1901 Harrison Street, Suite 1400, Oakland,
8 California 94612, which is located in the city, county and state where the mailing described
9 below took place.

10 On July 5, 2011, I served the following document(s), addressed as set forth in the
11 following manner:

12 **CERTIFICATE OF SERVICE OF STATEMENT RE FAILURE OF PLAINTIFFS TO
13 SERVE OPPOSITION TO FEDERAL DEPOSIT INSURANCE CORPORATION AS
14 RECEIVER OF DEFENDANT INDYMAC FEDERAL BANK, FSB'S MOTION TO
15 DISMISS CLAIMS**

16 BY E-FILING (USDC NORTHERN DISTRICT): I caused such document to be sent
17 electronically to the court; pursuant to General Order No. 08-02, electronic filing constitutes
18 service upon the parties who have consented to electronic service.

19 By placing the document(s) listed above in a sealed envelope with postage thereon, in the
20 United States mail at Oakland, California, addressed as set forth below to the following
21 person(s) at the following address on the date set forth below:

22 W. Kenneth Howard, Esq. Attorneys for Plaintiffs
23 Attorney at Law
24 116 East Campbell Avenue, #7
25 Campbell, CA 95008
26 Tel: (408) 379-1904
27 Fax: (408) 379-1902
28

///

1 A. Kristine Floyd, Esq.
2 Nicholas S. Shantar, Esq.
3 ALLEN MATKINS LECK GAMBLE
4 MALLORY & NATSIS LLP
5 1900 Main Street, Fifth Floor
6 Irvine, CA 92614-7321
7 Tel: (949) 553-1313
8 Fax: (949) 553-8354
9 Email: kfloyd@allenmatkins.com
10 nshantar@allenmatkins.com

Attorneys for Defendant and Counterclaimant
IndyMac Venture, LLC

11 I declare under penalty of perjury under the laws of the United States of America that the
12 foregoing is true and correct.

13 Executed this 5th day of July, 2011.

14 
15 DOUGLAS WATSON

16 1077177